IN THE COURT OF COMMON PLEAS OF SCHUYLKILL COUNTY, PENNSYLVANIA

TWENTY-FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

TAMAQUA EDUCATION ASSOCIATION, Plaintiff	:	
Vs.	:	
TAMAQUA AREA SCHOOL DISTRICT, Defendant	:	No. S-2062-2018

ACCEPTANCE OF SERVICE

I, Jeffrey P. Bowe, Esquire, accept service of the complaint in the above matter on behalf of the defendant and certify I am authorized to do so.

BOWE & ODORIZZI LAW, LLC

Dated: November 15, 2018

By: _____
Jeffrey P. Bowe, Esquire
Attorney for Defendant
Supreme Court I.D. No. 23188
109 West Broad Street
Tamaqua, PA 18252

IN THE COURT OF COMMON PLEAS OF SCHUYLKILL COUNTY, PENNSYLVANIA

TWENTY-FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

TAMAQUA EDUCATION ASSOCIATION, Plaintiff	:	
Vs.	:	
TAMAQUA AREA SCHOOL DISTRICT, Defendant	:	No. S-2062-2018

PRELIMINARY OBJECTIONS

The defendant, Tamaqua Area School District, by and through its attorneys, Bowe & Odorizzi Law, LLC, hereby preliminarily objects to the plaintiff's complaint as follows:

1. The present Civil Action was commenced by the plaintiff, Tamaqua Education Association ("TEA"), in the Court of Common Pleas of Schuylkill County by a complaint filed on November 14, 2018.

2. The complaint in Count I seeks relief under the Declaratory Judgments Act (42 Pa. C.S.A. §7531 et seq).

3. The declaratory judgment action as filed by TEA claims the defendant, the Tamaqua Area School District ("TASD") wrongly adopted Board Policy 705 on September 18, 2018 titled "Standard Operating Procedures for Persons Authorized to Use Weapons". TEA claims TASD was not authorized to adopt this policy regarding the use of firearms by TASD employees because

the Pennsylvania School Code, specifically 24 P.S. §§13-1301-C to 13-1314-C (effective June 22, 2018) does not authorize them to do so.

4. TEA also claims TASD's Policy 705 is not legal since it authorizes its employees to carry firearms on school property when they have not received training under the Municipal Police Education and Training Law (53 Pa. C.S.A. §§2161-2171) unless exempt from receiving such training as set forth in 24 P.S. §13-1305-C.

I. Lack of Capacity to Sue (Standing).

5. The averments of paragraphs 1 through 4 above are hereby incorporated by reference as though the same were set forth herein at length.

6. Pa. R.C.P. 1028(a)(5) permits a preliminary objection to be filed based on a "lack of capacity to sue".

7. TEA is seeking declaratory relief and a permanent injunction.

8. The Declaratory Judgments Act in 42 Pa. C.S.A. §7533 provides as follows:

> Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise, and obtain a declaration of rights, status or other legal relations thereunder.

9. The purpose of the Declaratory Judgments Act is "to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations". 42 Pa. C.S.A. §7541(a).

10. TEA claims it has standing to pursue this declaratory judgment action based upon paragraphs 15-20 of it's complaint.

11. As an association, to establish standing, TEA must allege facts based upon the following principle:

> It is well settled that an association, even in the absence of injury to itself, may have standing solely as a representative of its members to initiate a cause of action. However, the association must allege that is members or at least one its members are suffering immediate or threatened injury ... Therefore, the requirement that the association's members must suffer from a direct, immediate and substantial injury remains. Pennsylvania Gamefowl Breeders Association v. Commonwealth, 533 A.2d 838, 840 (Pa. Cmwlth. 1987).

12. In addition, TEA must prove there exists an actual justiciable controversy. Pennsylvania Gamefowl Breeders Association v. Commonwealth, supra.

13. TEA's claim that is authorized to file this action under the Declaratory Judgments Act because it is challenging the scope of TASD's authority to adopt Policy 705; citing Pa. C.S.A. §7532 and Blackwell v. Com., State Ethics Commission, 556 A.2d

988, 991 (Pa. Cmwlth. (1989) as set forth in paragraph 5 of TEA's complaint, is not a correct statement of the law.

14. The only direct harm which TEA attempts to allege is that Policy 705 will authorize TASD employees to carry firearms and be authorized when appropriate to use deadly force in the workplace of TEA members (see paragraphs 17-18 of TEA's complaint). This allegation is not sufficient since it does not allege at least one of its members are suffering immediate or threatened injury.

15. Since TEA has failed to allege sufficient facts to allege, immediate or threatened injury to a TEA member or a justiciable controversy, it is not entitled to seek relief under the Declaratory Judgments Act (42 Pa. C.S.A. §7531 et seq).

WHEREFORE, the defendant, TASD, respectfully requests this Honorable Court to grant is preliminary objection and dismiss TEA's complaint for lack of standing, and grant any other relief that this Court deems just and proper.

II. Legal Insufficiency of Pleading (Demurrer) to Count I.

16. The averments of paragraphs 1 through 15 above are hereby incorporated by reference as though the same were set forth herein at length.

17. Pa. R.C.P. 128(a)(4) permits a preliminary objection to be raised challenging the legal insufficiency of a

pleading which is for the "failure to state a cause of action upon which relief can be granted". DiGregorio v. Keystone Health Plan E, 840 A.2d 361, 366 (Pa. Super. 2003).

18. TASD is a creature or agency of the legislature and has only the powers granted specifically by statute or by necessary implication. Barth v. School District of Philadelphia, 393 Pa. 557, 143 A.2d 909 (1958).

19. There is no specific statute either authorizing or preventing TASD to enact Policy 705 within the Pennsylvania School Code, 24 P.S. §1-101 et seq.

20. Effective June 22, 2018, the State Legislature passed several statutes known as Article XIII-C School Police Officers and School Resource Officers. 24 P.S. §§13-1301 to C-13-1314-C.

21. One of the statutes in this section, 24 P.S. §13-1312-C provides: "Nothing in this article shall be construed to preclude a school entity or non-public school from employing other security personnel as a school entity or a non-public school entity deems necessary".

22. The broad language of 24 P.S. §13-1312-C by necessary implication authorizes TASD to adopt Policy 705 since it is a policy designed to employ other security personnel that TASD deems necessary for the protection of students and TASD employees.

23. Pursuant to 18 Pa. C.S.A. §912(c) a person is entitled to possess a weapon on school property if the weapon is possessed for a lawful purpose.

24. Based upon 18 Pa. C.S.A. §912(c), it would be legal for a school employee to obtain a license to carry as issued by the County Sheriff and possess this weapon while on school property. The employee would be carrying the weapon in an unofficial but permitted capacity as a private citizen. Arguably a lawful purpose could be construed as self-defense or defense of others (for example protection of children).

25. TEA further argues Policy 705 is unlawful because the policy provides employees who are approved to carry firearms will be trained under the Lethal Weapons Training Act (commonly known as Act 235), 22 P.S. §41-50.1, instead of obtaining training under the Municipal Police Educational and Training Law, 53 Pa. C.S.A. §2161-2171 (hereinafter referred to as "Act 120" which was repealed and replaced by similar provisions found in the above cited statute).

26. Act 120 does not apply to TASD or to Policy 705 since TASD is not a municipality nor are they a college or university; furthermore, they do not have a police department. 53 Pa. C.S.A. §2167.

WHEREFORE, the defendant demurrers to Count I of TEA's complaint and requests that Count I be dismissed with prejudice.

III. Legal Insufficiency of Pleading (Demurrer) to Count II - Request for Permanent Injunction.

27. The averments of paragraphs 1 through 26 above are hereby incorporated by reference as though the same were set forth herein at length.

28. TEA argues that since Policy 705 violates the law and since it has no adequate remedy at law for which damages can compensate, a permanent injunction should be issued to enjoin TASD from implementing the provisions of Policy 705.

29. A prerequisite to the entry of a permanent injunction is that TEA must establish that TASD has committed a manifest wrong.

30. Based upon the arguments in this Memorandum that TEA lacks standing and TASD is legally authorized to enact and implement Policy 705, TEA has not alleged a manifest wrong.

WHEREFORE, the defendant demurrers to Count II of TEA's complaint and requests that Count II be dismissed with prejudice.

Jeffrey P. Bowe, Esquire
Supreme Court I.D. #23188
Attorney for Defendant
BOWE & ODORIZZI LAW, LLC
109 West Broad Street
Tamaqua, PA 18252

IN THE COURT OF COMMON PLEAS OF SCHUYLKILL COUNTY, PENNSYLVANIA
TWENTY-FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

TAMAQUA EDUCATION ASSOCIATION, Plaintiff	:	
Vs.	:	
TAMAQUA AREA SCHOOL DISTRICT, Defendant	:	No. S-2062-2018

CERTIFICATE OF SERVICE

AND NOW, this 4th day of December, 2018, I, Jeffrey P. Bowe, Esquire, of the firm of Bowe & Odorizzi Law, LLC, attorneys for defendant, Tamaqua Area School District, hereby certify that I served the within Preliminary Objections this day by depositing the same in the United States mail, postage prepaid, addressed to:

Thomas W. Scott, Esquire
Scott P. Stedjan, Esquire
KILLIAN & GEPHART, LLP
218 Pine Street
P. O. Box 886
Harrisburg, PA 17101-0886

Jesika A. Steuerwalt, Esquire
Pennsylvania State Education Association
4950 Medical Center Circle
Allentown, PA 18106

BOWE & ODORIZZI LAW, LLC

By: _____
Jeffrey P. Bowe, Esquire
Attorney for Defendant
Supreme Court I.D. No. 2318
109 West Broad Street
Tamaqua, PA 18252-0290

IN THE COURT OF COMMON PLEAS OF SCHUYLKILL COUNTY, PENNSYLVANIA

TWENTY-FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

TAMAQUA EDUCATION ASSOCIATION, Plaintiff	:	
Vs.	:	
TAMAQUA AREA SCHOOL DISTRICT, Defendant	:	No. S-2062-2018

MEMORANDUM IN SUPPORT OF PRELIMINARY OBJECTIONS FILED BY THE TAMAQUA AREA SCHOOL DISTRICT

I. STATEMENT OF THE FACTS.

The plaintiff, Tamaqua Education Association ("TEA"), filed a complaint against the Tamaqua Area School District ("TASD") on November 14, 2018. The complaint as filed concerns an action by TASD when it approved Policy 705 on September 18, 2018 ("Policy 705").

Policy 705 provides for a procedure for the Board of Directors of TASD to appoint TASD employees as school resource professionals who have successfully completed all training and acquired all qualifications as set forth in the policy to carry firearms on School District property for the purposes of providing a safe environment for the students and other employees of the District. There are no provisions in Policy 705 which allow TASD to require or force certain individual teachers or other employees of TASD to become a School Resource

Professional ("SRP"). Instead the intent of the policy is only teachers or other employees who freely volunteer for these positions will be considered. A copy of Policy 705 is attached to TEA's complaint and designated as Exhibit "A".

The complaint as filed by TEA is comprised of two separate counts. The first count is a declaratory judgment action against TASD and the second count is a request for a permanent injunction against TASD. The primary claims of TEA are that TASD did not have the legal authority to adopt Policy 705 based upon the Public School Code of 1949 ("School Code"); and furthermore, Policy 705 is legally defective since it does not require training of SRPs under the Municipal Police Education and Training Law (53 Pa. C.S.A. §§2161-2171).

TASD has filed preliminary objections challenging TEA's standing to file the declaration judgment action and request for a permanent injunction. TASD also claims it has the authority to enact and implement Policy 705 and require training under The Lethal Weapons Training Act. It is these preliminary objections which were filed that are before the Court for disposition.

II. STATEMENT OF QUESTIONS INVOLVED.

A. WHETHER TEA HAS FAILED TO ALLEGE IT HAS STANDING TO PURSUE THIS CASE SINCE IT HAS NOT ALLEGED IMMEDIATE OR THREATENED INJURY NOR AN ACTUAL CONTROVERSY BETWEEN TEA AND TASD.

SUGGESTED ANSWER: YES

B. WHETHER THE IMPLEMENTATION OF POLICY 705 BY TASD IS AUTHORIZED BY NECESSARY IMPLICATION BY VIRTUE OF SECTION 13-1312-C OF THE SCHOOL CODE.

SUGGESTED ANSWER: YES

C. WHETHER POLICY 705 IS DEFECTIVE SINCE IT FAILS TO REQUIRE FIREARM TRAINING AS DICTATED BY ACT 120.

SUGGESTED ANSWER: NO

D. WHETHER A PERMANENT INJUNCTION SHOULD NOT BE ENTERED SINCE TEA HAS FAILED TO PLEAD A MANIFEST WRONG COMMITTED BY TASD.

SUGGESTED ANSWER: YES

III. A. TEA HAS NO STANDING SINCE IT HAS FAILED TO ALLEGE FACTS TO SUBSTANTIATE AN IMMEDIATE OR THREATENED INJURY OR THE EXISTENCE OF A JUSTICIABLE CONTROVERSY.

With regard to the issue of standing and the right of TEA to file this action, TEA's position can be summarized as follows:

1. TEA is an unincorporated association and the exclusive bargaining representative for the classroom teachers, guidance counselors and librarians employed by TASD (see paragraph 1 of the TEA's complaint).

2. TEA is authorized to file this action for declaratory relief because it is challenging the scope of TASD's authority to adopt Policy 705; citing 42 Pa. C.S.A. §5732 and Blackwell v. Com., State Ethics Commission, 556 A.2d 988, 991 (Pa. Cmwlth. 1989; (see paragraph 5 of the TEA's complaint).

3. TEA alleges its members have been directly affected and harmed by Policy 705 since it authorizes TASD employees to carry firearms and be authorized when appropriate to use deadly force in the workplace of TEA members; (see paragraphs 17-18 of TEA's complaint).

4. TEA further alleges its members have been harmed because the policy violates an express statutory provision; citing Stilp v. Commonwealth, 910 A.2d 775 (Pa. Cmwlth. 2006); (see paragraph 19 of TEA's complaint).

5. TEA claims it is entitled to pursue relief under the Declaratory Judgments Act without proving immediate or threatened injury and an actual controversy; citing Blackwell v. Com., State Ethics Commission, 556 A.2d 988, 991 (Pa. Cmwlth. 1989). The Blackwell decision does not stand for the principle espoused by TEA in paragraph 5 of its complaint. In Blackwell, the State Ethics Commission challenged the right of Blackwell to file an action under the Declaratory Judgments Act claiming Blackwell had failed to exhaust administrative remedies and a declaratory judgment action was not an available remedy when the matter was pending before the Ethics Commission. The Commonwealth Court held because Blackwell's challenge and in particular Blackwell's constitutional challenge was questioning the validity of the statute which granted the Commission's authority and power to exclusively proceed with the

investigation, it was proper for Blackwell to request declaratory relief. In this litigation, there is no challenge made to TEA's proceeding because of the exception set forth in 42 Pa. C.S.A. §7541(c)(2) as was the case in Blackwell. Therefore, Blackwell is not legal authority for TEA's request for relief under the Declaratory Judgments Act.

TASD agrees under appropriate circumstances, a declaratory judgment action is the appropriate method to challenge the legality of an ordinance or policy (see e.g. Smith v. Springfield Township Board of Supervisors, 787 A.2d 1112 (Pa. Cmwlth. 2001). However, for TEA to have standing to pursue the remedy it is seeking under the Declaratory Judgments Act, it still must: (1) allege at lease one of its members are suffering immediate or threatened injury; and (2) must prove there exists an actual justiciable controversy. See: Pennsylvania Gamefowl Breeders Association v. Com., 533 A.2d 838 (Pa. Cmwlth. 1987); Stilp v. Com., 910 A.2d 775 (Pa. Cmwlth. 2006).

TEA argues because TASD's enactment of Policy 705 is in violation of an express statutory provision it need not prove (or even plead) any further injury to request declaratory relief; citing Stilp v. Commonwealth, supra at page 787 (see paragraph 19 of TEA's complaint). The flaw in TEA's argument is it does not refer to any express statutory provision TASD is violating. In Council 13, American Federation of State, County and Municipal

Employees, AFL-CIO by Keller v. Casey, 595 A.2d 670 (Pa. Cmwlth. 1991), which was cited in the Stilp decision, the Commonwealth Court held the violation of an express statute as to methods by which public employees would be paid, 71 P.S. §83(a), was sufficient and no further allegation of irreparable harm need be pled or proved to issue a preliminary injunction where other requisite elements are present. In this case, TEA cannot point to any specific statute TASD has violated in passing Policy 705. No statute expressly prohibits TASD from enacting a policy which would permit TASD employees to carry weapons for the purposes of increasing their security and safety the students and its staff in the public school environment. In fact, as will be argued later in this Memorandum, 24 P.S. §13-1312-C expressly permits school districts to employ other security measures not enumerated in 24 P.S. §§13-1301-C - 13-1314-C.

TEA also argues it has been harmed because once Policy 705 is implemented, TASD employees will be carrying firearms in "their" workplace (see paragraph 18 of TEA's complaint). The carrying of weapons for the purposes of self-defense and defense of other persons by TASD employees does not equate to an immediate or threatened injury to any TEA member. The importance of pleading immediate or threatened injury is set forth in the case of Pennsylvania Gamefowl Breeders Association v. Com., 533 A.2d 838, 840 (Pa. Cmwlth. 1987) where the Commonwealth Court stated:

> It is well settled that an association, even in the absence of injury to itself, may have standing solely as a representative of its members to initiate a cause of action. However, the association must allege that its members or at least one its members are suffering immediate or threatened injury ... Therefore, the requirement that the association's members must suffer from a direct, immediate and substantial injury remains.

The immediate or threatened injury must demonstrate a close causation between Policy 705 and threatened injury. Wm. Penn Parking Garage, Inc. v. City of Pittsburgh, 346 A.2d 269, 286 (Pa. 1975). TEA's allegation of harm simply due to TASD employees carrying weapons in the teacher's workplace is not sufficient to establish this requirement, since there is not even any mention of what the threatened harm could be.

Lastly with respect to standing, the complaint must disclose there is an actual controversy. This "actual controversy" must represent imminent and inevitable litigation in which TEA would have a direct, substantial and present interest. Here TEA has not pled any actual controversy. As will be argued in a subsequent section of this Memorandum, TASD has the legal right to enact Policy 705. However, beyond that argument; there is nothing in TEA's complaint from which this Court can glean the existence of an actual controversy. An actual controversy exists if litigation is both imminent and inevitable and that the declaration sought will practically help to end the controversy between the parties. Commonwealth of Pennsylvania v. Seneca

Resources Corporation, 84 A.3d 1098 (Pa. Cmwlth. 2014). There is not the slightest indication that litigation between these parties is inevitable. Moreover, if litigation would be instituted it will not be instituted by TEA. TEA argues the threatened harm is the existence of armed employees within the School District property (in "their" workplace). Arguably if an armed TASD employee injures an innocent person or unjustifiably injures a person representing a threat to security, litigation could be instituted by that person. However, this litigation would not be brought by the teacher's bargaining representative (TEA), but by the injured party. It is highly speculative to assert injury to a TEA member will be imminent if Policy 705 is implemented. A declaratory judgment is not appropriate in cases where the court is asked to determine rights in anticipation of events which may never occur. Com. of Pennsylvania v. Seneca Resources Corporation, 84 A.3d 1098, 1103 (Cmwlth. Ct. 2014).

Therefore, TEA has not pled sufficient, actionable facts or circumstances from which this Court can determine immediate or threatened injury to a TEA member or the existence of an actual controversy. The lack of either requirement is fatal to TEA's request for declaratory relief.

B. THE IMPLEMENTATION OF POLICY 705 BY TASD IS BY NECESSARY IMPLICATION AUTHORIZED BY SECTION 13-1312-C OF THE SCHOOL CODE.

The most important question which this Court must determine is whether or not TASD is authorized to enact and

implement Policy 705. TASD is a creature or agency of the legislature and has only the powers granted specifically by statute or by necessary implication. Barth v. School District of Philadelphia, 143 A.2d 909 (Pa. 1958); Shamokin Area School District v. American Federation of State, County and Municipal Employees District Council 86, 20 A.3d 579 (Pa. Cmwlth. 2011). The entire school system in the Commonwealth of Pennsylvania is an agency of the legislature maintained by them to carry out its constitutional duty to provide for the maintenance and support of a thorough and efficient system of public education. See Pennsylvania Constitution, Article 3 §14. In conjunction with this constitutional duty, there is a well-established public policy of protecting students from violence on school property. Shamokin Area School District, supra at p. 582.

Although admittedly in the past the concern of protecting students from violence centered around bullying or other types of violence between students, it is evident the legislature is now well aware of new security concerns regarding the safety of students and staff. In particular, the General Assembly as set forth in 24 P.S. §13-1301-D, stated "over the past several years, school shootings have become more frequent". These school shootings have prompted the legislature to adopt provisions regarding the creation of the Safe Schools Office (24 P.S. §§13-1301-A to 13-1313-A) a School Safety and Security

Committee (24 P.S. §§13-1301-B to 13-1310-B) and the statutes which must be closely analyzed in this case; the statutes creating positions for school police officers and school resource officers (24 P.S. §§13-1301-C to 13-1314-C). TEA argues the statutes that create positions for school police officers (24 P.S. §13-1302-C) and school resource officers (24 P.S. §13-1313-C) provide "a comprehensive scheme for the use of security personnel and firearms in the schools of this Commonwealth" (see paragraph 33 of TEA's complaint).

It is true that nowhere in this article (24 P.S. §§1301-C to 1314-C) or otherwise in the School Code are there any provisions which expressly permit TASD to create a policy enabling TASD employees to carry firearms on school property. However, this Court cannot ignore the provisions of 24 P.S. §13-1312-C. This statute is entitled "Construction". It further states "nothing in this article shall be construed to preclude a school entity or non-public school from employing other security personnel as a school entity or non-public school deems necessary (emphasis supplied)". The inclusion of this statute within the section of statutes designed to improve security within our schools from random acts of violence would be rendered completely meaningless if as TEA claims, school districts such as TASD cannot employ other types of security measures to fulfill its established duty to protect students from violence on school

property. The Statutory Construction Act provides in the enactment of a statute there is presumption that the General Assembly intends the entire statute to be effective and certain (1 Pa. C.S. §1922(2)). Therefore, if in fact the General Assembly did not intend for school districts to be authorized to arm school employees with weapons to safeguard their students, such a provision could have easily been inserted into 24 P.S. §13-1312-C. The broad language of this statute, by necessary implication, permits TASD to enact Policy 705. Therefore, Policy 705 is a legal exercise of the powers given to a school district as enunciated in Barth v. School District of Philadelphia, supra.

TEA, in support of its argument that 24 P.S. §13-1312-C does not allow TASD to implement Policy 705, claims "Like other employees of political subdivisions, these employees cannot carry a firearm on duty without express authorization by the General Assembly". See TEA complaint paragraph 28(e). There is no statutory or case citation given for this averment in paragraph 28(e). The reason for this is simple; the statement is not legally correct. Pursuant to 18 Pa. C.S.A. §912, criminal penalties are imposed if a person possesses a weapon on school district property. 18 Pa. C.S.A. §912(c) provides it is a defense to a criminal charge under this statute if the weapon is possessed and used in conjunction with a lawful supervised school activity or is possessed for other lawful purpose. The only

appellate court decision interpreting the scope of this defense is the case of the Commonwealth of Pennsylvania v. Goslin, 156 A.3d 314 (Pa. Super. 2017). In this case the Superior Court held the plain language of §912(c) did not limit its interpretation of "other lawful purpose" to require the lawful purpose to be related to a reason why one is on school property. Interestingly in a footnote to that decision, the Court said "Although we are concerned about individuals possessing weapons on school property, we are bound by the broad defense that the legislature has provided defendants in such cases. We would urge the legislature to review this language to ensure that the legislature's view has not changed since it enacted this defense in 1980".

Since the Goslin decision on February 16, 2017, 21 months has passed and 18 Pa. C.S.A. §912(c) has not been amended; and therefore, is still the law of this Commonwealth. Arguably there would be no legal impediment for a school employee to obtain a license to carry as issued by the County Sheriff and possess this weapon while a school property. The employee would be carrying the weapon in an unofficial but permitted capacity as a private citizen. Arguably a lawful purpose could be construed as self-dense or defense of others (for example protection of children). Therefore the legislature has certainly not prohibited school employees from carrying weapons while on school property legal as claimed by TEA.

In conclusion, TASD's enactment and implementation of Policy 705 is a legitimate exercise of its power to provide better security and safety of its students and employees.

C. POLICY 705 IS NOT DEFECTIVE BECAUSE IT DOES NOT MANDATE ACT 120 TRAINING.

Lastly, TEA argues that Policy 705 is unlawful since the policy provides employees who will be approved to carry firearms must be trained under the Lethal Weapons Training Act (commonly know as Act 235), 22 P.S. §§41-50.1. TEA argues since Act 235 applies to privately employed persons (see 22 P.S. §43), and since municipalities may only authorize their employees to carry firearms after receiving training pursuant to the Municipal Police Educational and Training Law, 53 Pa. C.S. §§2161-2171 (commonly known as Act 120), the training prescribed by the policy in not a permissible type of training even assuming arguendo TASD would otherwise be entitled to adopt a policy permitting employees to carry weapons on school property (see paragraph 36 of the TEA's complaint).

First of all, even though Act 235 applies to privately employed persons, this does not mean public employees cannot participate in Act 235 training and receive an Act 235 certification.

The Municipal Police Education and Training Law, requires all municipalities and all colleges and universities to

train all members of their police departments pursuant to this Act (53 Pa. C.S.A. §2167(a)).

Although the term municipalities is not defined in the Act, school districts are not considered municipalities since they are agencies of the state legislature and do not possess the governmental attributes of municipalities. Barth v. School District of Philadelphia, 143 A.2d 909 (Pa. 1958).

School districts are also not colleges or universities as defined in 53 Pa. C.S.A. §2162. They do not have police departments as that term is defined in 53 Pa. C.S.A. §2162.

Furthermore, Act 120 is not the exclusive method for training law enforcement. See Com. v. Kline, 741 A.2d 1281 (Pa. Sup. Ct. 1999) which held deputy sheriffs need "appropriate" training but not necessarily Act 120 training to enforce motor vehicle laws.

For these reasons there is no authority for TEA's argument that a TASD employee carrying weapons pursuant to Policy 705 would be required to receive training under The Municipal Police Education and Training Law as claimed in paragraph 36 of TEA's complaint.

D. A PERMANENT INJUNCTION IS NOT WARRANTED SINCE TEA HAD NOT PLED A WRONG THAT IS MANIFEST AND TEA'S RIGHT TO RELIEF IS CLEAR.

Moscatiello v. Whitehall Borough, 848 A.2d 1071 (Pa. Cmwlth. 2004) states the five prong test which the moving party

must satisfy to be entitled to an injunction. Frankly speaking, if the Court should agree with TEA that they have standing and TASD did not have authority to enact Policy 705, there would be no grounds for TASD to argue that there should be demurrer granted with respect to Count II of the complaint. However, if the Court should hold that TEA does not have the necessary standing to institute the litigation or that TASD is entitled to enact Policy 705, Count II being TEA's request for an injunction should fail as well.

IV. CONCLUSION.

Based upon the preliminary objections which have been filed by TASD, for the reasons set forth in this Memorandum, it is respectfully submitted that the complaint of TEA should be dismissed with prejudice.

Respectfully Submitted,

Jeffrey P. Bowe, Esquire
Supreme Court I.D. #23188
Attorney for Defendant
BOWE & ODORIZZI LAW, LLC
109 West Broad Street
Tamaqua, PA 18252

IN THE COURT OF COMMON PLEAS OF SCHUYLKILL COUNTY, PENNSYLVANIA
TWENTY-FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

TAMAQUA EDUCATION ASSOCIATION, Plaintiff	:	
Vs.	:	
TAMAQUA AREA SCHOOL DISTRICT, Defendant	:	No. S-2062-2018

CERTIFICATE OF SERVICE

AND NOW, this 4th day of December, 2018, I, Jeffrey P. Bowe, Esquire, of the firm of Bowe & Odorizzi Law, LLC, attorneys for defendant, Tamaqua Area School District, hereby certify that I served the within Memorandum In Support of Preliminary Objections this day by depositing the same in the United States mail, postage prepaid, addressed to:

Thomas W. Scott, Esquire
Scott P. Stedjan, Esquire
KILLIAN & GEPHART, LLP
218 Pine Street
P. O. Box 886
Harrisburg, PA 17101-0886

Jesika A. Steuerwalt, Esquire
Pennsylvania State Education Association
4950 Medical Center Circle
Allentown, PA 18106

BOWE & ODORIZZI LAW, LLC

By: _____
Jeffrey P. Bowe, Esquire
Attorney for Defendant
Supreme Court I.D. No. 2318
109 West Broad Street
Tamaqua, PA 18252-0290